IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

(SPECIAL ORIGINAL JURISDICTION)

Thursday, the fifth day of August, two thousand and four

PRESENT

THE HON'BLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No. 5719 OF 2004

BETWEEN:

G.Suveer S/o Narender, aged about 41 years, Working as Conductor (E.307084), APSRTC., Kamareddy Depot, Kamareddy, Nizamabad District.

Petitioner

And

Andhra Pradesh State Road Transport Corporation, represented by its Regional Manager, Nizamabad.

Respondent

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ or order or direction, especially one in the nature of Writ of Mandamus, declaring the action of the respondent in not regularizing the services of petitioner with effect from 1-7-1987, as illegal and arbitrary, consequently direct the respondent to regularize the services of petitioner with effect from 1-7-1987, duly granting all other consequential benefits.

For the Petitioner: Mr.K.Vasudeva Reddy, Advocate.

For the Respondents: Mr.K.Harinath.

The Court made the following :

ORDER:

The petitioner questions the order of the respondent made in proceedings No.E1/225(1)/02-RM-NZB., dated 27-8-2002 in rejecting the request of the petitioner for regularization of his services with effect from 1-7-1987 to 1-7-1988 i.e., for a period of one year on the ground that the Writ Petition No.18530 of 1987 filed by the petitioner was dismissed.

Writ Petition No.18530 of 1987 was filed by the petitioner to issue a writ of mandamus declaring the action of the respondent in not permitting him to discharge his duties with effect from 15-10-1987 without there being any order of suspension under the guise of

disappearance and not paying the wages as illegal. The said Writ Petition was dismissed, against which, the petitioner filed Writ Appeal No.1057 of 1990, which was allowed in terms of the Judgment in Writ Appeal No.218 of 1993 dated 7-8-1995.

The question that arose in the said Writ Appeal No.218 of 1993 was that in treating the waiting period as put off duty without conducting any enquiry is illegal.

Writ Appeal No.218 of 1993 was filed by the APSRTC., against the orders in W.P.No.14816 of 1991 dated 29-11-1991. The said Writ petition was filed assailing the similar order of being put off duty, which was allowed and against which, the Writ Appeal filed by the APSRTC., was dismissed, holding that there is a difference between the put off duty and an order of suspension. In the case of put off duty, no interim payment, pending enquiry is guaranteed, whereas in the case of suspension, subsistence allowance is necessarily to be paid. Therefore, the APSRTC., could not have been merely ordered to be put off duty. But, the respondents without noticing the order in the Writ Appeal No.1057 of 1990, rejected the case of the petitioner for his regularization of the aforesaid period of put off duty.

The learned counsel appearing for the respondent submits that the regularization orders dated 8-9-1989 made by the Depot Manager, Kamareddy with effect from 1-7-1988 have not been questioned and therefore, it is not open for the petitioner to seek the relief of regularization of the period of put off duty. It is to be stated that the petitioner questioned the action of the respondent in not permitting him to discharge the duties with effect from 15-10-1987 and not treating certain period as put off duty. Though the Writ Petition filed by him i.e., W.P.No.18530 of 1987 was dismissed on 18-10-1990, against which, the petitioner filed Writ Appeal No.1057 of 1990, which was allowed on 5-6-1996 therefore, the order passed by the Depot Manager, Kamareddy, dated 8-9-1989 cannot be said that it has become final. Pursuant to the order in the Writ Appeal No.1057 of 1990, the respondent is bound to consider the case of the

petitioner and therefore, petitioner has been making representation and his representation was ultimately rejected by an order dated 27-8-2000 on the ground that the Writ Petition was dismissed without noticing the fact that the Writ Appeal filed against the orders in the Writ Petition was allowed.

Having regard to the facts and circumstances of the case, the respondent is directed to re-consider the case of the petitioner in the light of the Judgment in Writ Appeal No.1057 of 1990, which was allowed in terms of the Judgment in Writ Appeal No.218 of 1993, dated 7-8-1995 and pass appropriate orders within six weeks from the date of receipt of this order. The petitioner may also file an application enclosing the copy of the orders in Writ Appeal No.1057 of 1990, dated 5-6-1996 and the order in W.A.No.218 of 1993, dated 7-8-1995 so as to enable the respondent to re-consider the case of the petitioner.

The Writ petition is disposed of accordingly. No order as to costs.

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V.ESWARAIAH,J

5th August, 2004.

Shr/Dvs

Asst.Registrar.

To

1. The Regional Manager, APSRTC., Nizamabad.
2. Two CD copies.